

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

CHMM, LLC,

3:12-CV-01484-ST

Plaintiff,

ORDER

v.

FREEMAN MARINE EQUIPMENT,  
INC.,

Defendant.

BROWN, Judge.

Magistrate Judge Janice M. Stewart issued Findings and Recommendation (#28) on December 17, 2012, in which she recommended the Court grant Defendant's Motion (#11) to Dismiss as to Plaintiff's First through Fifth Claims for damage to property installed on and integrated into the Vessel prior to its delivery by Nobiskrug to Plaintiff, grant Defendant's Motion (#11) as to that portion of Plaintiff's Sixth Claim alleging a

breach of contract, and deny the remaining portions of Defendant's Motion as to Plaintiff's other claims. The Magistrate Judge also recommended Plaintiff be allowed to amend its Amended Complaint to the extent that Plaintiff seeks tort remedies for damage to "other property" added after delivery of the Vessel by Nobiskrug to Plaintiff. Plaintiff filed timely Objections to the Findings and Recommendation. The matter is now before this Court pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b).

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1). See also *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9<sup>th</sup> Cir. 2003)(*en banc*); *United States v. Bernhardt*, 840 F.2d 1441, 1444 (9<sup>th</sup> Cir. 1988).

In its Objections, Plaintiff reiterates the arguments contained in its Response to Defendant's Motion to Dismiss and stated at oral argument. This Court has carefully considered Plaintiff's Objections and concludes they do not provide a basis to modify the Findings and Recommendation. The Court also has reviewed the pertinent portions of the record *de novo* and does not find any error in the Magistrate Judge's Findings and Recommendation.

**CONCLUSION**

The Court **ADOPTS** Magistrate Judge Stewart's Findings and Recommendation (#28), **GRANTS** Defendant's Motion (#11) to Dismiss as to Plaintiff's First through Fifth Claims for damage to property installed on and integrated into the Vessel prior to its delivery by Nobiskrug to Plaintiff, **GRANTS** Defendant's Motion (#11) as to that portion of Plaintiff's Sixth Claim alleging a breach of contract, and **DENIES** the remaining portions of Defendant's Motion as to Plaintiff's other claims.

The Court **GRANTS** Plaintiff leave to file a Second Amended Complaint no later than **February 21, 2013**, to the extent that Plaintiff seeks tort remedies for damage to "other property" added after delivery of the Vessel by Nobiskrug to Plaintiff. If Plaintiff does not file a Second Amended Complaint, this matter will proceed on the remaining claims in Plaintiff's Amended Complaint.

IT IS SO ORDERED.

DATED this 7<sup>th</sup> day of February, 2013.

/s/ Anna J. Brown

---

ANNA J. BROWN  
United States District Judge